Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2019	)	MD Docket No. 19-105
	)	
	)	

<u>COMMENTS OF RAMAR COMMUNICATIONS, INC.</u>

Ramar Communications, Inc. ("Ramar"), by its attorneys, hereby submits the following comments in response to the Notice of Proposed Rulemaking, FCC 19-37, released on May 8, 2019 by the Federal Communications Commission ("FCC" or the "Commission") in the above-captioned proceeding.[1] The NPRM seeks comment on proposed regulatory fees for fiscal year (FY) 2019.

The NPRM solicits comment on various issues concerning FCC assessment and collection of regulatory fees relating to full-power broadcast television stations.[2] The NPRM proposes that each such station would pay this year a "blended" annual regulatory fee that is computed by averaging two amounts: (i) a fee based on the size of the designated market area (DMA) in which that station is licensed to operate (the "DMA Based Fee"); and (ii) a fee based on the number of people residing within the projected noise-limited service contour of that station, a population figure derived from the TVStudy database (the "Population Based Fee").[3] The NPRM's blended fee proposal does **not** take into account a factor that has historically

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[1] *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, MD Docket No. 19-105, Notice of Proposed Rulemaking, FCC 19-37 (rel. May 8, 2019) ("NPRM").
[2] NPRM at ¶¶ 20-21.
[3] *Id*. at ¶ 21.

played an important role in the agency's regulatory fee calculations, namely a particular station's status as a satellite of a parent station.[4] Since 1995, satellite stations have each year been assessed a reduced regulatory fee in a fixed amount, regardless of market size.[5] Last year, that fixed satellite station fee was $1,500.[6] As a practical matter, the NPRM's failure to take satellite status into account means that many satellite stations, including those owned by Ramar, are facing a massive escalation in their proposed annual fees.[7] The purpose of these comments is to seek relief from this draconian result.

The NPRM notes that the Commission decided in fiscal year 2018 that, in future fiscal years, it would move to "more accurately ascertain the actual market served by a station for purposes of assessing regulatory fees by examining the actual population covered by the station's

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[4] For FCC regulatory fee purposes, satellite stations are those that paid satellite regulatory fees in the prior year or are listed as satellites in CDBS, the current Television and Cable Factbook, or BIA/Kelsey MEDIA Access Pro. *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7057, 7069-70, ¶ 29 (2017).

[5] *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, Report and Order, 10 FCC Rcd 13512, 13534, ¶ 60 (1995).

[6] *Assessment and Collection of Regulatory Fees for Fiscal Year 2018*, Report and Order and Order, 33 FCC Rcd 8497 at Appendix C (2018) ("*FY 2018 R&O*").

[7] For example, in 2018, Ramar satellite station KUPT(TV), Hobbs, NM (a station which is part of the geographically expansive Albuquerque-Santa Fe DMA, but whose signal covers a population of only 87,602) paid the fixed satellite station regulatory fee of $1,500. Appendix C of the NPRM calculates KUPT's proposed blended fee for 2019 to be $13,915 (½ of the DMA Based Fee of $27,150 plus ½ of the Population Based Fee of $680). $13,915 is more than **nine times (900 percent)** higher than the 2018 fee of $1,500 and more than **20 times (2,000 percent)** higher than the new Population Based Fee of $680. Unless Ramar secures relief from the NPRM's blended fee proposal, similarly dramatic negative results will befall its other satellite stations in the Albuquerque-Santa Fe DMA (KTEL-TV, Carlsbad, NM and KRTN-TV, Durango, CO). The NPRM gives no indication that the collateral damage which the blended fee approach threatens to visit on satellite stations was intentional.

contours rather than using DMAs."[8] The NPRM also recites that in 2018, the FCC projected that it "planned to adopt a fee based on an average of the *historical* DMA methodology and the population covered by a full-power broadcast station's contour for FY 2019."[9] Now that the NPRM has proposed specific regulatory fees for 2019, however, the assessment of a reduced flat fee on satellite stations in all markets, a long-established part of the agency's "*historical* DMA methodology," has disappeared. And with that disappearance, in heavily populated DMAs, the proposed 2019 fees for certain satellite stations depart wildly from their historical norms.[10]

As a general proposition, the FCC's long-established imposition of lower regulatory fees for broadcast satellite stations regardless of market size is both rational and fair. That is because satellite stations are effectively "second class citizens" within the television industry. A typical satellite station: (i) is licensed to a smaller, less well populated (one might say a "satellite") city, generally resulting in service to underserved areas and populations, but at the expense of competitive coverage of the population center of the relevant DMA; (ii) rebroadcasts the programming of a parent broadcast television station that does serve the primary city; and (iii) is listed as a satellite of a parent in standard industry sources/publications such as the Television and Cable Factbook and/or BIA/Kelsey. A satellite station is effectively tethered to its parent and is not held out to competitors, the public, or advertisers as an independent, standalone

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[8] NPRM at ¶ 20, citing *Assessment and Collection of Regulatory Fees for Fiscal Year 2018*, Report and Order and Notice of Proposed Rulemaking, 33 FCC 5091, 5102, ¶ 28 (2018) ("*FY 2018 NPRM*").

[9] NPRM at ¶ 21, citing *FY 2018 R&O* at ¶ 14 (footnote omitted) (emphasis added). The *FY 2018 R&O*, however, nowhere specified that satellite station fees in heavily populated DMAs would depart from historical norms in 2019 and skyrocket for certain stations for that one year.

[10] The sharp escalation of proposed 2019 satellite station regulatory fees in the Albuquerque-Santa Fe DMA is mirrored for satellite stations in other DMAs like Minneapolis-St. Paul and Boston.

station. Once it acquires the satellite label, a station's standing in the industry and its independent revenue-generating capabilities are reduced.

In today's intensely competitive video marketplace, television satellite stations warrant – and need – continuation of the lower satellite fees. As noted above, satellites typically have substantial deficiencies in over-the-air area and population coverage which relegate them to second class status. When a station's over-the-air coverage is a fraction of the coverage of its broadcast competitors, that station inevitably suffers in the competitive areas that matter, including its attractiveness to advertisers and program suppliers.[11] The last thing satellite stations need is a massive jump in regulatory fees that have been fixed at reduced levels for nearly a quarter century. This station-budget-busting surprise appears somehow to have escaped the Commission's attention in the NPRM, as there is no recognition of the sharp escalation, much less any discussion thereof.

There is a simple, equitable fix. The basic idea behind the 2019 blend is that the FCC will average the DMA Based Fee stations are accustomed to paying and the Population Based Fee to which the FCC is transitioning. That makes sense for stations that have been paying the DMA Based Fee. But it makes **no** sense for satellite stations, which have **not** been paying the DMA Based Fee. Rather, satellite stations should be assessed a fee in 2019 that blends the fixed

[11] Ramar can attest to these considerable marketplace disadvantages. For example, it operates KUPT(TV) as a satellite station within the vast Albuquerque-Santa Fe DMA. KUPT is the only full power television station licensed to Hobbs, New Mexico. Hobbs' airport is located 253 miles from the airport for the city of Albuquerque. Hobbs had a 2010 census population of 34,122 (compared to the 650,890 *television households* Nielsen currently estimates to be in the entire DMA), and KUPT's over-the-air signal covers less than six percent of both the total population and area of the entire DMA. KUPT bears no resemblance to a station able to cover the DMA's main population.

satellite fee they have historically paid (e.g., $1,500 in 2018) and the Population Based Fee they will be paying in future years.[12]

The FCC should continue to provide substantial regulatory fee relief to all satellite stations, thereby helping to ensure that the agency's regulatory fee scheme is rational and fair. Basic principles governing agency decision-making require that the FCC treat, equitably and consistently, all satellite TV stations with limited over the air coverage that serve smaller communities, including those that happen to be located in large DMAs.[13] That bedrock concept counsels strongly against adoption of special rules for 2019 that deny small, less competitive stations continuation of the much needed break the FCC has long given them from high regulatory fees appropriate for major market stations (that have the potential to generate much more revenue and profit). Adoption of Ramar's suggested modification to the NPRM's proposed 2019 fees for satellite stations would align those fees directly with the Commission's goal, articulated in paragraph 28 of the *FY 2018 NPRM*, to "assess[] regulatory fees" that "more accurately reflect the actual market served by a full-power broadcast television station."

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[12] Continuing with the example reviewed in n. 7 *supra*, under this *revised* blended approach applicable to satellites, Ramar's KUPT's blended fee would be $1,054 (last year's fixed fee of $1,500 plus Appendix C's Population Based Fee of $608, divided by 2).

[13] *See Melody Music, Inc. v. FCC*, 345 F.2d 730, 32 (D.C. Cir. 1965). *See also New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 361, 366 (D.C. Cir. 1987); *Public Media Center v. FCC*, 587 F.2d 1322, 1333 (D.C. Cir. 1978).

CONCLUSION

For the reasons articulated above, Ramar respectfully requests that all television satellite stations be afforded the relief requested above.

Respectfully submitted,

Ramar Communications, Inc.

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